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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 COLUMBIA RIVERKEEPERS,  
11

12 Plaintiff,

13 v.

14 EGT, LLC et al.,  
15

Defendants.

CASE NO. 3:20-cv-05981-LK

CONSENT DECREE

16 **I. STIPULATIONS**

17 WHEREAS, Plaintiff Columbia Riverkeeper (“Riverkeeper”) filed a complaint on October  
18 2, 2020 against the Port of Longview (Dkt. No. 1) and filed an amended complaint on December  
19 8, 2020 (Dkt. No. 8), adding alleged violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*,  
20 by EGT, LLC (“EGT”) relating to discharges of stormwater and other pollutants from EGT’s  
21 facility at the Port of Longview in Longview, Washington (the “facility”) and seeking declaratory  
22 and injunctive relief, civil penalties, and attorneys’ fees and costs.  
23  
24

WHEREAS, Riverkeeper and EGT (the “Parties”) agree that settlement of these matters is in the best interest of the Parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

WHEREAS, Riverkeeper and EGT stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding Riverkeeper’s claims or allegations set forth in its complaint and its sixty-day notice.

DATED this 14th day of June, 2022

STOEL RIVES LLP

SMITH & LOWNEY, PLLC

By s/ Beth Ginsberg

By s/ Marc Zemel

Beth Ginsberg, WSBA #18523

Marc Zemel, WSBA #44325

Veronica Keithley, WSBA #52784

*Attorneys for Plaintiff*

*Attorney for Defendant EGT, LLC*

*Columbia Riverkeeper*

EGT, LLC

COLUMBIA RIVERKEEPER

By [signature in original]

By [signature in original]

Beverly Garner

Lauren Goldberg

Associate General Counsel, Bunge

Legal and Program Director

## II. ORDER AND DECREE

THIS MATTER came before the Court on the Parties’ Joint Motion for Entry of Consent Decree, Dkt. No. 45, and the foregoing Stipulations of the parties. The United States has notified the Court that it has reviewed the proposed consent decree in this action and does not object to its entry by this Court. Dkt. No. 47. Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the parties and subject matter of this action.

2. Each signatory for the parties certifies for that party that he or she is authorized to enter into the agreement set forth herein and to legally bind the party or parties, their successors in interest and assigns of the parties to it.

1           3.       This Consent Decree applies to and binds the parties and their successors and  
2 assigns.

3           4.       This Consent Decree and any injunctive relief ordered within applies to the  
4 operation, oversight, or both by EGT of its Facility at 150 E. Mill Road, Longview, WA (the  
5 “Facility”).

6           5.       This Consent Decree is a full and complete settlement and release of all the claims  
7 in the complaint and the sixty-day notice and all other claims known or unknown existing as of  
8 the date of entry of the Consent Decree that could be asserted under the Clean Water Act, 33 U.S.C.  
9 §§ 1251-1387, arising from operation of the Facility. Upon termination of this Consent Decree,  
10 these claims are released and dismissed with prejudice. EGT’s payment of attorney’s fees and  
11 litigation costs set forth in paragraph 10 of the Consent Decree will be in full and complete  
12 satisfaction of any claims Riverkeeper and Smith & Lowney have or may have, either legal or  
13 equitable, known or unknown, and of any kind or nature whatsoever, for fees, expenses, and costs  
14 incurred in the Litigation. Enforcement of this Consent Decree is Riverkeeper’s exclusive remedy  
15 for any violation of its terms. During the term of the Consent Decree, Riverkeeper will not support  
16 by financial assistance, personnel time, or otherwise, other lawsuits or potential lawsuits by  
17 Riverkeeper’s members or other groups or individuals that could be asserted under the Clean Water  
18 Act, 33 U.S.C. §§ 1251-1387, arising from operation of the Facility

19           6.       This Consent Decree is a settlement of disputed facts and law. It is not an admission  
20 or adjudication regarding any allegations by Riverkeeper in this case or of any fact or conclusion  
21 of law related to those allegations, nor evidence of any wrongdoing or misconduct on the part of  
22 EGT. EGT agrees to the terms and conditions identified below in paragraphs 7-9 in full and  
23 complete satisfaction of all the claims covered by this Consent Decree:

24           7       Injunctive Relief:

- 1 a. Within ten (10) business days of the effective date of the Consent Decree, EGT will  
2 apply for coverage under the Industrial Stormwater General Permit (ISGP), and if  
3 coverage is obtained, EGT will comply fully with all conditions of the ISGP and  
4 any successor, modified, or replacement permit authorizing discharges of  
5 stormwater associated with industrial activity from the Facility.
- 6 b. For a period of three (3) years after the entry of this Consent Decree, EGT will, on  
7 a quarterly basis, electronically forward to Riverkeeper copies of all submissions  
8 to and communications to and/or from Ecology related to EGT's ISGP coverage or  
9 stormwater discharges from the Facility.
- 10 c. Within thirty (30) days of the effective date of the Consent Decree, EGT will  
11 prepare a draft Stormwater Pollution Prevention Plan ("SWPPP") with the  
12 assistance of a qualified consultant, which is ISGP-compliant. Within one week of  
13 preparing the draft SWPPP, EGT will provide this draft SWPPP to Riverkeeper for  
14 review and comment. Within thirty (30) days of Riverkeeper's receipt of EGT's  
15 draft SWPPP, Riverkeeper will provide to EGT any comments to the draft SWPPP.  
16 Within twenty one (21) days of EGT's receipt of Riverkeeper's comments, EGT  
17 must either incorporate Riverkeeper's comments into the SWPPP or provide a  
18 detailed, written response to Riverkeeper explaining why any comment was not  
19 incorporated into the SWPPP. EGT must provide a copy of its SWPPP to the  
20 Department of Ecology, along with all of Riverkeeper's suggestions or comments  
21 (if any), and share this submission with Riverkeeper contemporaneously. Within  
22 14 (fourteen) days of entry of the Consent Decree and completion of EGT's  
23 required payment procedures, EGT will provide \$3,000 to Riverkeeper to conduct  
24 this review and comment process with assistance of consultants and attorneys, as

1 directed in paragraph 8 of this Consent Decree.

2 i. The SWPPP must contain a sampling plan designating the emergency  
3 overflow pipe at the north pond and at the south pond as monitoring points.

4 ii. The SWPPP will include a Grain Spill Prevention Plan (“GSPP”) for the  
5 Facility and will describe procedures to mitigate grain loss to the Columbia  
6 River and grain/dust contamination of stormwater. In developing the GSPP,  
7 EGT will conduct a thorough inspection of all grain conveyance equipment  
8 and structures on the dock for damage where grain or dust could escape and  
9 make necessary repairs. EGT will train all EGT personnel working on the  
10 dock or involved in grain conveyance to vessels about the requirements of  
11 the GSPP.

12 d. Promptly after the effective date of the Consent Decree, EGT will route any  
13 discharge from the downspout on the barge dock to prevent discharge to the  
14 Columbia River. EGT will provide Riverkeeper with notice upon completion.

15 e. For the first year (12 months) following issuance of ISGP coverage, EGT will  
16 monitor the designated monitoring points identified in ¶7.c. of this Consent Decree,  
17 monthly and analyze any discharges for the applicable parameters (including for  
18 fecal coliform bacteria and E. coli – see ISGP Table 6). EGT will submit discharge  
19 monitoring reports to Ecology, as required by the ISGP. For the remainder of the  
20 Consent Decree term, EGT will monitor the designated monitoring points quarterly  
21 as required by the ISGP.

22 f. During the term of the Consent Decree, EGT with assistance of a qualified  
23 engineering firm as necessary, will conduct a research and development project,  
24 not to exceed \$150,000 in costs, to design actuated gates to be attached to the

1 discharge end of the grain spouts that would close during movement of the spouts  
2 from the vessel hold to the “tip box” on the dock, which will include a feasibility  
3 analysis before any installation would be undertaken. The purpose of the actuated  
4 gates is to reduce the potential for grain or grain dust to be released from the spouts.  
5 EGT will provide Riverkeeper with quarterly status updates on the progress of the  
6 research and development project. If EGT’s feasibility analysis concludes that these  
7 actuated gates are not feasible, EGT will provide Riverkeeper with a detailed  
8 explanation in writing for that conclusion.

- 9 g. EGT will be subject to a stipulated payment in lieu of penalty of \$2,500 (TWO  
10 THOUSAND FIVE HUNDRED DOLLARS) to the organization Seeding Justice  
11 for each unauthorized release from the conveyance system of solid grain or grain  
12 dust to the Columbia River, with notice to Columbia Riverkeeper during the term  
13 of this Consent Decree, with payment to be made as directed in paragraph 9.

14 8. Release of Future SWPPP Claims: For the life of the Consent Decree, Riverkeeper  
15 covenants not to bring another enforcement action under the Clean Water Act citizen suit  
16 challenging the sufficiency of EGT’s SWPPP, including but not limited to the sampling plan, and  
17 specifically, EGT’s designation of monitoring points and subsequent monitoring pursuant to ISGP  
18 Condition S3 and S4.

19 9. Payment in Lieu of Penalty: Within fourteen (14) days of entry of this Consent  
20 Decree and completion of EGT’s required payment procedures, EGT will pay \$715,000 (SEVEN  
21 HUNDRED AND FIFTEEN THOUSAND DOLLARS) to Seeding Justice for projects that benefit  
22 water quality in the Columbia River basin, as described in Exhibit 1 to this Consent Decree, Dkt.  
23 No. 45-1 at 14–17. The checks will be made to the order of Seeding Justice and delivered by check  
24 made payable and mailed to: Seeding Justice, P.O. Box 12489, Portland, OR 97212. Payment will

1 include the following reference in a cover letter or on the check: "Consent Decree, Riverkeeper v.  
2 EGT, LLC, W.D. Wash. No. 3:20-cv-05981-LK." Simultaneously, EGT will send a copy of the  
3 checks and cover letters, if any, to Columbia Riverkeeper and its counsel.

4 10. Within fourteen (14) days of entry of this Consent Decree by the Court and  
5 completion of EGT's required payment procedures, EGT will pay \$220,000 (TWO HUNDRED  
6 AND TWENTY THOUSAND DOLLARS) to Riverkeeper to cover Riverkeeper's litigation fees,  
7 expenses, and costs (including reasonable attorneys and expert witness fees) by check payable and  
8 mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn: Marc Zemel. This  
9 figure does not include the \$3,000 payment under para. 7.c of this Consent Decree.

10 11. A force majeure event is any event outside the reasonable control of EGT that  
11 causes a delay in performing tasks required by this Consent Decree that cannot be cured by due  
12 diligence. Delay in performance of a task required by this Consent Decree caused by a force  
13 majeure event is not a failure to comply with the terms of this Consent Decree, provided that EGT  
14 timely notifies Riverkeeper of the event, the steps that EGT will take to perform the task, the  
15 projected time that will be needed to complete the task, and the measures that have been taken or  
16 will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in  
17 completing the task.

18 12. EGT will notify Riverkeeper of the occurrence of a force majeure event as soon as  
19 reasonably possible but, in any case, no later than fifteen (15) days after EGT becomes aware of  
20 the event. In such event, the time for performance of the task will be extended for a reasonable  
21 period of time following the force majeure event.

22 By way of example and not limitation, force majeure events include

- 23 a. Acts of God, war, insurrection, or civil disturbance;  
24 b. Earthquakes, landslides, fire, floods;

- c. Actions or inactions of third parties over which EGT has no control;
- d. Unusually adverse weather conditions;
- e. Restraint by court order or order of public authority;
- f. Strikes;
- g. Any permit or other approval sought by EGT from a government authority to implement any of the actions required by this Consent Decree where such approval is not granted or is delayed, and where EGT has timely and in good faith sought the permit or approval;
- h. Litigation, arbitration, or mediation that causes delay;
- i. Epidemics and pandemics, including but not limited to COVID-19 related delays;
- j. Supply chain issues and delays.

13. This Court retains jurisdiction over this matter, while this Consent Decree remains in force. While this Consent Decree remains in force, this case may be reopened without filing fees so that the Parties may apply to the Court for any further order that may be necessary to enforce compliance with this Consent Decree or to resolve any dispute regarding the terms or conditions of this Consent Decree. In the event of a dispute regarding implementation of, or compliance with, this Consent Decree, the Parties must first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute. Such a meeting should be held as soon as practical but must be held within thirty (30) days after notice of a request for such a meeting to the other Party and its counsel of record. If no resolution is reached at that meeting or within thirty (30) days of the Notice, either Party may file a motion with this Court to resolve the dispute. The provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including reasonable attorney and expert witness



1 fees) to any prevailing or substantially prevailing party, will apply to any proceedings seeking to  
2 enforce the terms and conditions of this Consent Decree.

3 14. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment  
4 can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-  
5 five (45) days following the receipt of a copy of the proposed consent judgment by the U.S.  
6 Attorney General and the Administrator of the U.S. Environmental Protection Agency (“EPA”).  
7 Therefore, upon the filing of this Consent Decree by the parties, Columbia Riverkeeper will serve  
8 copies of it upon the Administrator of the U.S. EPA and the U.S. Attorney General.

9 15. This Consent Decree will take effect upon entry by this Court. The Consent Decree  
10 terminates three years after that date.

11 16. Both parties have participated in drafting this Consent Decree.

12 17. This Consent Decree constitutes the entire agreement between the Parties. There  
13 are no other or further agreements, either written or verbal. This Consent Decree may be modified  
14 only upon a writing signed by both Parties and the approval of the Court.

15 18. If for any reason the Court should decline to approve this Consent Decree in the  
16 form presented, this Consent Decree is voidable at the discretion of either Party. The Parties agree  
17 to continue negotiations in good faith to cure any objection raised by the Court to entry of this  
18 Consent Decree.

19 19. Notifications required by this Consent Decree must be in writing. The sending  
20 Party may use any of the following methods of delivery: (1) personal delivery; (2) registered or  
21 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally  
22 recognized overnight courier, with all fees prepaid; or (4) email. For a notice or other  
23 communication regarding this Consent Decree to be valid, it must be delivered to the receiving  
24 Party at the one or more addresses listed below or to any other address designated by the receiving

1 Party in a notice in accordance with this paragraph.

2 **If to Columbia Riverkeeper:**

3 Simone Anter  
4 Columbia Riverkeeper  
5 1125 SE Madison St. Suite 103A  
6 Portland, OR 97214  
7 Email: [simone@columbiariverkeeper.org](mailto:simone@columbiariverkeeper.org)

8 **And to:**

9 Marc Zemel  
10 Smith & Lowney PLLC  
11 2317 East John St.  
12 Seattle, WA 98112  
13 email: [marc@smithandlowney.com](mailto:marc@smithandlowney.com)

14 **If to EGT:**

15 Matthew Kerrigan  
16 EGT, LLC 150 East Mill Road  
17 Longview, WA 98632  
18 Email: [matthew.kerrigan@egt-llc.com](mailto:matthew.kerrigan@egt-llc.com)

19 **And to:**

20 Beverly Garner  
21 Associate General Counsel  
22 Bunge North America, Inc.  
23 1391 Timberlake Manor Parkway  
24 Chesterfield, MO 63017  
Email: [beverly.garner@bunge.com](mailto:beverly.garner@bunge.com)

Beth Ginsberg  
Veronica Keithley  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
Email: [beth.ginsberg@stoel.com](mailto:beth.ginsberg@stoel.com)  
[veronica.keithley@stoel.com](mailto:veronica.keithley@stoel.com)

A notice or other communication regarding this Consent Decree will be effective when received unless the notice or other communication is received after 5:00 p.m. on a business day,

1 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the  
2 next business day. A notice or other communication will be deemed to have been received: (a) if  
3 it is delivered in person or sent by registered or certified mail or by nationally recognized overnight  
4 courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party  
5 rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address  
6 for which no notice was given, then upon that rejection, refusal, or inability to deliver; or (c) for  
7 notice provided by e-mail, upon receipt of a response by the party providing notice or other  
8 communication regarding this Consent Decree.

9  
10 Dated this 8th day of November, 2022.

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12 Lauren King  
13 United States District Judge  
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